

STATE OF IOWA  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

HARMONY COMMUNITY SCHOOL DISTRICT, )  
Public Employer, )  
and )  
HARMONY EDUCATION ASSOCIATION, )  
Certified Employee )  
Organization. )

CASE NO. 5504

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PUBLIC EMPLOYMENT  
RELATIONS BOARD

RULING AND ORDER

This matter is before the Public Employment Relations Board (PERB or Board) on an objection to further impasse procedures filed by the Harmony Community School District pursuant to PERB rule 621-7.6(20). The District seeks a ruling terminating further impasse-resolution procedures between it and the Harmony Education Association because of the Association's alleged noncompliance with PERB subrule 621-7.5(1). The Association has resisted the District's objection.

The parties waived evidentiary hearing and submitted the matter on a record composed of stipulated facts, as supplemented by our official notice of documents contained in PERB's official records. Oral arguments were presented to us on May 6, 1996, by the parties' counsel, James A. Dorothy for the District and William R. Unger for the Association.

FINDINGS OF FACT

The District is the employer of employees in a bargaining unit which includes teachers licensed under Iowa Code ch. 260 and which is represented by the Association for purposes of collective

bargaining under the Public Employment Relations Act, Iowa Code ch. 20 (the Act).

Sometime in 1995 the parties commenced negotiations toward the formation of a successor collective bargaining agreement to become effective in 1996. The parties entered into no independent impasse agreement as contemplated by Iowa Code section 20.19, and were thus operating under the impasse-resolution procedures specified in the Act and PERB rules.

Negotiations failed to produce a successor agreement, even following the involvement of a PERB-appointed mediator in February, 1996.

On April 17, 1996, PERB received through ordinary U.S. Mail delivery a PERB Request for Impasse Services form signed by the Association's chief spokesperson, Rachel A. Stewart, containing the Association's request that PERB arrange for binding arbitration of the parties' impasse pursuant to Iowa Code section 20.22.

The request itself is dated April 15, 1996. The envelope in which the request was contained when received by PERB bears a U.S. Postal Service postmark of April 16, 1996, at Burlington, Iowa. The form itself was file-stamped by PERB at 11:11 a.m. on April 17.

#### CONCLUSIONS OF LAW

The District's objection is premised upon PERB subrule 7.5(1), which provides:

**7.5(1) Request for arbitration.** At any time following the making public by the board of the fact finder's report and recommendations, either party to an impasse may request the board to arrange for binding arbitration. In disputes unresolved after mediation where all or a portion of the public employees in the bargaining unit

are teachers licensed under Iowa Code chapter 260 and the public employer is a school district, community college, or area education association, such request may be made not less than ten days after the effective date of the appointment of the mediator but must be made not later than April 16 of the year when the resulting collective bargaining agreement is to become effective.

In its objection the District asserts the Association has failed to comply with subrule 7.5(1) since its request for arbitration was not received by PERB until April 17. The District, while acknowledging that the actual language of subrule 7.5(1) requires that a request for arbitration be "made" not later than April 16, argues that that provision must be read in conjunction with subrule 7.6(1) governing objections to impasse procedures, and that the subrule 7.6(1) requirement that objections be "filed" within certain time periods must be deemed equally applicable to requests for arbitration pursuant to subrule 7.5(1).

We do not agree. Subrules 7.5(1) and 7.6(1), although both related to the impasse-resolution process, deal with separate subjects. We were well aware of the language of subrule 7.6(1) when we adopted subrule 7.5(1) in its present form, and chose to use the language we used, rather than language we employed in other rules.

Subrule 7.5(1) requires that requests for arbitration be "made not later than April 16. . .", not that such requests be "received" by or "filed" with PERB no later than that date.<sup>1</sup>

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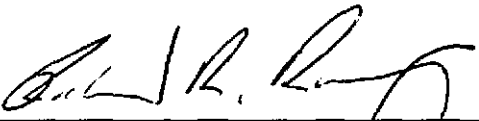
<sup>1</sup>Even were we to adopt the District's argument that requests must be "filed" no later than April 16, we would view as persuasive, if not controlling, the provisions of Iowa Code section 17A.12(9), providing that requests for contested case proceedings, if delivered to an agency by mail, shall be considered as filed

Under the facts of this case we need not determine precisely when the Association's request for arbitration was "made." Without deciding whether an earlier event, such as the placing of a request for arbitration in a U.S. Postal Service depository, might satisfy the requirement of subrule 7.5(1),<sup>2</sup> it is sufficient for us to hold that the Association's request to PERB, which was postmarked April 16, 1996, was "made not later than April 16" within the meaning of that subrule.

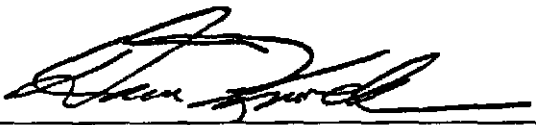
IT IS THEREFORE ORDERED that the Harmony Community School District's objection to further impasse procedures is OVERRULED. Absent the parties' voluntary resolution of their bargaining impasse or their formation of an Iowa Code section 20.19 impasse agreement, they shall proceed with the impasse-resolution procedures prescribed by the Act.

DATED at Des Moines, Iowa this 8th day of May, 1996.

PUBLIC EMPLOYMENT RELATIONS BOARD

  
Richard R. Ramsey, Chairman

  
M. Sue Warner, Board Member

  
Dave Knock, Board Member

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with the agency on the U.S. Postal Service postmark date.

<sup>2</sup>See Ia.R.Civ.P. 82(d).